SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. [redacted]130

KEOKUK & HAMILTON BRIDGE COMPANY,
APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
WILLIAM E. MILLER, ET AL.,
APPELLEES.

APPELLANT'S BRIEF IN REPLY TO APPELLEES' BRIEF ON MOTION TO DISMISS.

F. T. HUGHES,
Solicitor for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1920.

No. 512.

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APPELLANT,

vs.

FRED SALM, JR., ELMER F. DENNIS,
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STATEMENT.

We have been served with what appellees style reply brief on motion to dismiss and in answer to appellant's motion to advance and submit the cause in connection with appellee's motion to dismiss the appeal. We hardly feel it necessary to discuss the points referred to, for in any event, such points could have no force or effect on appellant's right to the equitable relief sought in its bill of complaint. They say—

1. That before appellant can resort to equitable proceedings, he must have exhausted the statutory remedies provided in Sec. 329, Chap. 120, Hurd's R. S. of Illinois, which provides on complainant in writing that any property described in such complaint is incorrectly assessed, the Board shall review the assessment and correct the same as shall appear to be just,

and it is claimed that complainant herein we take it by not going before this Board with its complaint forever lost its right to complain that its property was assessed at more than its actual cash value while all other property of a similar class was assessed at 30 to 40 per cent value. No such construction can be put on this law because the act of these assessors and Board of Review cannot deprive the complainant of its constitutional rights under the 14th Amendment to the Federal Constitution and when a party claims a right under the laws of Congress and Constitution of the United States, he must plead that right before some court of competent jurisdiction to hear and determine such questions and be denied and where the party would have a right of appeal or error if need be to the Federal Supreme Court, and besides this going before this Board is not even a prerequisite to such right, because you can raise these questions for the first time in the "County Court" in the suit by collector for judgment on the tax list, and this is the first place you could plead or raise the Federal question that in the assessing of appellant's property you had been denied the equal protection of the laws under the 14th Amendment to th Federal Constitution. It is expressly provided in said Sec. 191 of the Chap. 120 for raising all such questions and this is the holding of the courts in such cases of other State Courts under similar tax laws.

In Re Koochiching County Taxes, 177 N. W. (Minn.) 940, where the question was directly raised and the Court said:

"The further contention that to entitle the property owner to the defense of overvaluation he must first apply for relief to the board of equalization is not sound. * * * Here the statute expressly and in so many words provides that the defense of overvaluation may be interposed when the proceeding is before the court on the application for judgment, which is long after the proceedings have passed the authority of the board of equalization or other officers charged with like duties. No conditions are imposed upon the right to interpose the defense, and no provision of these statute requires that application be first made to the equalization officers. The court can impose no such condition."

So if we are not precluded from raising these questions by not going before the Board of Review in the State Court, most certainly we are not so precluded from going into the Federal Court, but conceding in the least that in any event we could not go into the Federal Court in the first instance, we have so fully shown that it is the law of this Court that,—

"A State cannot tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its officers, to suits for redress in its own courts."

Smyth v. Ames, 169 U. S. 466, 517.

And as said in *Chicago Union Traction Company v. State Board of Equaliation*, 114 Fed. 557, 566, which is the case affirmed in the Raymond case, where the Circuit Court says:

"We have no doubt that complainants may intrench themselves against this invasion by the writ of injunction. It is incomprehensible that the complainants may not avert this threatened invasion of their rights—that they must first yield and then turn prosecutors in a court of law to recover their loss. The fundamental guarantees of the Constitution must not be thus emasculated."

The contention of the appellees would be that under this Chap. 120, Sec. 319-329, Hurd's R. S. of Illinois, the taxpayer, where by reason of the Federal questions or diverse citizenship has a right to resort to the Federal Courts of Equity to prevent this threatened invasion, he must still take notice at his peril, that the assessors of the township have assessed one class of property at 30 to 40 per cent of its value and another including the appellant's bridge and railroad property at 150 per cent of its value and urge these township assessors, who may have no knowledge whatever of one's constitutional rights to set aside the entire township assessment as real property and raise it to 150 per cent of its value or lower appellant's property to 30 or 40 per cent of its value and with no means whatever of compelling these officers to perform their duty but must in a sense "beg them" to do right and if they don't, then he must go again to the Board of Review consisting of two or

three of these assessors and clerks and try out his plea on them and then they would say, you must make your defense in the County Court and without any or all of these efforts, appellant could ask the assistance of a Court of Equity to restrain these officials from their acts and threatened invasions of appellant's rights. These local assessors should consult the cousel for the State, rather than call upon the taxpayer or its counsel to direct and compel them to refrain from such illegal acts. Appellant can stand upon its own constitutional rights and by one act of injunction, stop all these proceedings and see that its property is fairly assessed and it pays such equal and just taxes as other taxpayers in the same class may pay. We have no doubt of the sufficiency of our bill of complaint to warrant the relief prayed.

Appellees' counsel says,—

"The bill must show that the remedy provided by the State was sought."

Citing *Hodges v. Muscatine County*, 196 U. S. 261.
Pittsburg Etc. R. Co. v. Board of Public Works, 172 U. S. 47.

Neither of these cases supports the contention. The Hodge case was an action at law on error from the State Court and the only question was what is due process. The Pittsburg case was bill in equity and the Court laid down the principles that ordinarily the law must be pursued and that when one resorts to equity, there must be some special circumstances and this Court has said so many times that violations of one's constitutional rights and where no provision is made for tendering or paying the taxes and having the tax collectors or the municipality held liable in a suit to recover back such illegal taxes and whereas in the instant case no such law exists and when the taxes are paid the collector turns them to the Treasurer and he disburses to the proper owner of same and the taxpayer would have to bring a number of suits and as to that part of the tax going to the State no suit could be maintained there would be irreparable loss and where the tax levied becomes a lien and a cloud upon

the property and the County Court in the instant case has no equitable powers to remove such clouds, your Honors will find that in every case the appellant has made out its case and is entitled to the relief prayed and the decree of the court below must be reversed.

Appellee files some typewritten motions to strike for ambiguity, etc. We hardly feel this Court will concern itself with such questions. The appellee moved to dismiss appellant's appeal and appellant took issue and asks the Court to determine the whole case, and why not? It simply makes one case out of two.

F. T. Hughes,
Solicitor for Appellant.